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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,120	12/14/2000	Francine Joly	GEI-082	2156
7590 04/20/2004				
Charles A Muserlian Bierman Muserlian and Lucas 600 Third Avenue New York, NY 10016			EXAMINER FUBARA, BLESSING M	
			ART UNIT 1615	PAPER NUMBER

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/700,120	Applicant(s) JOLY ET AL.	
	Examiner Blessing M. Fubara	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57 and 58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57 and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner acknowledges receipt of request for extension of time, amendment and remarks filed 12/04/03. Claims 57 and 58 are pending.

Claim Rejections - 35 USC § 112

1. The rejection of claims 51-54 under 35 U.S.C. 112, second paragraph, for failing to provide antecedence for additional ingredients, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is moot because claims 51-54 are cancelled.

Claim Rejections - 35 USC § 103

2. The rejection of claim 46 35 U.S.C. 103(a) as being unpatentable over JP 404126057 in view of N'Guyen et al. (US 5,352,695) is moot because claim 46 is cancelled by the amendment of 12/04/03.

3. Claims 57 and 58 remain rejected under 35 U.S.C. 103(a) as being unpatentable over JP 404126057.

Applicants argue that the instant claims are not obvious over the JP reference taken alone or in view of N'Guyen et al. (US 5,352,695) because the JP reference does not teach the method of treating specific conditions as recited in the instant claims; and applicants further asserted that the JP reference is a soft drink containing sea water with other ingredients and "has absolutely nothing to do with method of treatment and therefore, withdrawal of this ground of rejection is requested."

4. Applicants' arguments filed 12/04/03 have been fully considered but they are not persuasive.

To begin with, claim 46 has been cancelled by the amendment submitted 12/04/03 and therefore the rejection of claim 46 over the JP reference in view of N'Guyen et al. (US 5,352,695) is withdrawn/moot. Thus, the N'Guyen' prior art will not be addressed in this section.

The abstract of the JP reference discloses a composition comprising seawater, adequate amounts of water, saccharides, a fruit juice, proteins, an amino acid, vitamins, vegetable extracts, carbonic acid, a flavoring agent, a sweetener, lactic acid and lactic acid bacteria, honey, nicotinic acid, sodium glutamate, a sour agent, a thickener, a colorant, a stabilizer, an emulsifying agent, fiber, fats, ash, arginine, caffeine, preservative and caramel as presented in the last office action. Amino acids including the basic amino acids have amino groups/moieties. Also, salts of amino acids are obvious variants of amino acids.

Claims 57 and 58 are amended to include the amounts of sea water and amounts of the basic amino acid. Consultation of the translation of the JP reference shows that, the prior art discloses 3-5% of sea water in the soft drink and this amount meets the limitation of the lower limit of 3-95% by weight of sea water. However, the JP reference (translation), while disclosing that the soft drink contains sodium L-glutamate, arginine, caramel, lactic acid and stabilizer among other ingredients, is silent on the amount of the basic amino acids in the soft drink. The amounts of the basic amino acids recited in claims 57 and 58 in the amount of 0.0001% for the lower limit appears to represent trace amounts. However, it is known that sea water contains amino acids and Chau et al. in ("The determination of amino acids in sea water," in the Deep-Sea Research, 1966, Vol. 13, pp. 1115-1124) which is a teaching reference added to show that sea water contains amino acid, discloses the kinds of amino acids found in sea water.

However, applicants' argument is directed to the assertion that the JP reference does not teach the instant method. It is respectfully noted that the instant method administers to a warm blooded animal a composition that is disclosed and administered to a subject as a soft drink in the prior art except for the trace amounts of the basic amino acid that is provided/supplied by the sea water as disclosed by the teaching reference. Thus both the prior art and the instant claims are administering a composition that has sea water as a component part of the composition. Thus while the instant invention may have recognized that administration of a composition containing sea water has an inhibitory effect on mastocyte activation or allergic reactions, the instant claims are not patentable over the prior art. In re Cruciferous Sprout Litigation, 64 USPQ2d 1202, NO. 02-1031, decided August 21, 2002 supports the premise of the Examiner's position.

No claim is allowed.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 242-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Blessing Fubara
Patent Examiner
Tech. Center 1600